

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS JOHN HENDERSON	DEFENDANTS PROSPER MARKETPLACE INCOPORATED	
ATTORNEYS (Firm Name, Address, and Telephone No.) James A. Flexer, 1900 Church Street, Suite 400, Nashville, TN 37203, (615) 255 2893	ATTORNEYS (If Known) n/a	
PARTY (Check One Box Only) <input checked="" type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input checked="" type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee	
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) COMPLAINT FOR TURNOVER AND REQUEST FOR DAMAGES AND ATTORNEY FEES FOR VIOLATION OF 11 U.S.C. §362(a)		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <p><input checked="" type="checkbox"/> FRBP 7001(1) – Recovery of Money/Property</p> <p><input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property</p> <p><input type="checkbox"/> 12-Recovery of money/property - §547 preference</p> <p><input type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer</p> <p><input type="checkbox"/> 14-Recovery of money/property - other</p> <p>FRBP 7001(2) – Validity, Priority or Extent of Lien</p> <p><input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property</p> <p>FRBP 7001(3) – Approval of Sale of Property</p> <p><input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)</p> <p>FRBP 7001(4) – Objection/Revocation of Discharge</p> <p><input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)</p> <p>FRBP 7001(5) – Revocation of Confirmation</p> <p><input type="checkbox"/> 51-Revocation of confirmation</p> <p>FRBP 7001(6) – Dischargeability</p> <p><input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims</p> <p><input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud</p> <p><input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny</p> <p style="text-align: center;">(continued next column)</p> </div> <div style="width: 48%;"> <p>FRBP 7001(6) – Dischargeability (continued)</p> <p><input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support</p> <p><input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury</p> <p><input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan</p> <p><input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)</p> <p><input type="checkbox"/> 65-Dischargeability - other</p> <p>FRBP 7001(7) – Injunctive Relief</p> <p><input type="checkbox"/> 71-Injunctive relief – reinstatement of stay</p> <p><input checked="" type="checkbox"/> 72-Injunctive relief – other</p> <p>FRBP 7001(8) Subordination of Claim or Interest</p> <p><input type="checkbox"/> 81-Subordination of claim or interest</p> <p>FRBP 7001(9) Declaratory Judgment</p> <p><input type="checkbox"/> 91-Declaratory judgment</p> <p>FRBP 7001(10) Determination of Removed Action</p> <p><input type="checkbox"/> 01-Determination of removed claim or cause</p> <p>Other</p> <p><input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et seq.</i></p> <p><input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)</p> </div> </div>		
<input type="checkbox"/> Check if this case involves a substantive issue of state law	<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23	
<input type="checkbox"/> Check if a jury trial is demanded in complaint	Demand \$ 2,674.00	
Other Relief Sought TURNOVER OF PROPERTY, SANCTIONS, PUNITIVE DAMAGES, ATTORNEY FEES/COSTS		

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES			
NAME OF DEBTOR JOHN HENDERSON		BANKRUPTCY CASE NO. 3:16-bk-01316	
DISTRICT IN WHICH CASE IS PENDING Middle District of Tennessee	DIVISIONAL OFFICE 3	NAME OF JUDGE LUNDIN	
RELATED ADVERSARY PROCEEDING (IF ANY)			
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.	
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISIONAL OFFICE	NAME OF JUDGE	
SIGNATURE OF ATTORNEY (OR PLAINTIFF)			
<div style="display: flex; justify-content: space-between; align-items: center;"> <div>/s/ James A. Flexer</div> <div style="font-size: small;"> Digitally signed by /s/ James A. Flexer DN: CN = /s/ James A. Flexer, C = US, O = The Law Offices of James A. Flexer, OU = Attorney at Law Date: 2008.05.06 09:47:15 -05'00' </div> </div>			
DATE 05/05/2016	PRINT NAME OF ATTORNEY (OR PLAINTIFF) James A. Flexer, Attorney at Law		

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, if it is required by the court. In some courts, the cover sheet is not required when the adversary proceeding is filed electronically through the court's Case Management/Electronic Case Files (CM/ECF) system. (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and the defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and in the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

IN RE:	}	Case No. 3:16-bk-01316
JOHN LEWIS HENDERSON, JR.	}	
600 DUSAN BLVD, APT. L7	}	Chapter 13
MURFREESBORO, TN 37129	}	
SSN: xxx-xx-8144	}	Judge Keith M. Lundin
Debtor	}	
	}	
JOHN LEWIS HENDERSON, JR.	}	
PLAINTIFF	}	
	}	
v.	}	
	}	
PROSPER MARKETPLACE INCORPORATED	}	
DEFENDANT.	}	
	}	

**COMPLAINT FOR TURNOVER AND REQUEST FOR SANCTIONS FOR
VIOLATION OF THE AUTOMATIC STAY OF 11 U.S.C. §362(a)**

Comes now the Debtor/Plaintiff, John Henderson, Jr. (hereinafter “the Debtor”), by and through counsel, pursuant to Fed.R.Bankr.P. § 7001(1) and (7) for cause of action against Defendant Prosper Marketplace Incorporated (hereinafter referred to as “Defendant”), would state and show the following:

JURISDICTION AND VENUE

1. Jurisdiction over this cause is proper pursuant to 28 U.S.C. §157 and §1334.
2. Venue over this cause is conferred by 28 U.S.C. §1408 and §1409.
3. This cause is a core proceeding and is a Complaint for Turnover and is a proceeding to obtain an injunction and other equitable relief governed by Fed.R.Bankr.P. § 7001(1) and (7).

FACTS AND CAUSE OF ACTION

4. On February 26, 2016, the Debtor filed a Chapter 13 bankruptcy which was assigned case number 16-01316.
5. The Debtor listed on Schedule F of his bankruptcy petition, an unsecured debt in the amount of \$3,498.00 which was owed to the Defendant, Prosper Marketplace Incorporated. Notice of said bankruptcy filing was sent to the Defendant's address at 101 Second Street, Floor 15, San Francisco, California, 94105 and the Debtor submits that the Defendant received notice of said bankruptcy filing.
6. On March 01, 2016, the Defendant deducted \$174.00 from the Debtor's bank account. The prohibited collection of the pre-petition debt subsequently caused the Debtor to incur an overdraft fee in the amount of \$37.00.
7. On March 10, 2016, Counsel for the Debtor called the Defendant, Prosper Marketplace Inc., and requested a refund of the Debtor's \$174.00. Counsel for the Debtor was advised by the representative from Prosper Marketplace Inc. that a refund of such funds would take at least ten business days.
8. On March 18, 2016, Counsel for the Debtor faxed to the Defendant a letter demanding the return of the \$174.00 taken from the Debtor's bank account as well as payment for the overdraft fees in the amount of \$37.00 (See Exhibit A).
9. As of the date of the filing of this adversary proceeding, the Defendant has refused to refund to the Debtor said funds, which were taken from the Debtor's bank account unlawfully as well as reimburse the Debtor for the overdraft fee that he incurred.

10. The Debtor submits that the actions of the Defendant constitute a willful violation of the automatic stay of 11 U.S.C. §362(a) because the Defendant has received notice of the bankruptcy filing from the United States Bankruptcy Court as well as Debtor's counsel, and has refused to turnover the funds that they unlawfully seized in violation of the automatic stay.
11. Due to the Defendant's failure to return the funds unlawfully taken from the Debtor's bank account, the Debtor has been compelled to retain Flexer Law to recover said funds.

PRAYER FOR RELIEF

As such, it is respectfully requested that:

- a. The Court enter an order finding the Defendant in violation of the automatic stay of 11 U.S.C. §362.
- b. Debtor prays that the Court grant an order compelling the Defendant to turnover the \$174.00 taken from the Debtor's checking account.
- c. Debtor further prays for attorney fees for time expended in the prosecution of this complaint.
- d. Debtor further prays for punitive and compensatory damages against Defendant in the amount of \$2,500.00 for their willful violation and continuing violation of the automatic stay of 11 U.S.C. §362.
- e. Debtor further prays any other relief deemed just and necessary by this Honorable Court.

RESPECTFULLY SUBMITTED,

/s/ James A. Flexer

JAMES A. FLEXER, BPR #9447

Attorney for Debtor

1900 Church Street, Suite 400

Nashville, TN 37203

(615) 255-2893

fax: (615) 242 8849

cm-ecf@jamesflexerconsumerlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on May 05, 2016, I furnished a true and correct copy of the foregoing to the following parties in interest:

HENRY EDWARD HILDEBRAND, III
OFFICE OF THE CHAPTER 13 TRUSTEE
PO BOX 340019
NASHVILLE, TN 37203-0019

Electronic

Sam Crocker, U.S. Trustee
318 Customs House, 701 Broadway
Nashville, TN 37203

Electronic

JOHN LEWIS HENDERSON, JR.
600 DUSAN BLVD, APT. L7
MURFREESBORO, TN 37129

U.S. Mail First Class

Aaron Vermunt
CEO of Prosper Marketplace Inc.
221 Main Street, Suite 300
San Francisco, CA 94105

U.S. Mail First Class
Certified Mail
Return Receipt Requested

Corporation Service Company
Registered Agent for Prosper Marketplace Inc.
2908 Poston Avenue
Nashville, TN 37203

U.S. Mail First Class
Certified Mail
Return Receipt Requested

5 notices have been served. I have mailed 3 notices.

/s/ James A. Flexer
James A. Flexer

EXHIBIT “A”

THE LAW OFFICES OF JAMES FLEXER

1900 CHURCH STREET, SUITE 400
NASHVILLE, TN 37203
TEL (615) 255-2893
FAX (615) 242-8849
WEBSITE WWW.FLEXERLAW.COM

JAMES A. FLEXER
JEFFREY M. LEVINE
DANIEL T. CASTAGNA
LEWIS A. WILLIAMS
BRYAN C. PENLAND
LORI LOTT SZATHMARY
RODNEY L. CALDWELL
MICHELLE L. SPEZIA

Sunday, March 13, 2016

Prosper Marketplace In
101 2nd St Fl 15
San Francisco, CA 94105

VIA U.S. MAIL FIRST CLASS

Re: HENDERSON, JR., JOHN LEWIS
Middle District of Tennessee Chapter 13 No. 3:16-bk-01316
#3874500

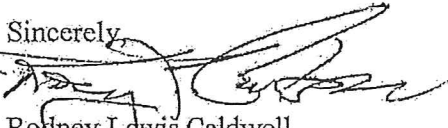
Dear Sir/Madam:

Please be advised that I represent the above referenced debtor(s) in a Chapter 13 bankruptcy filed in the United States Bankruptcy Court for the Middle District of Tennessee on February 26, 2016. The Debtor(s) are under the protection of 11 U.S.C. § 362. Accordingly, please immediately cease and desist your collection activity in light of the bankruptcy filing.

On March 1, 2016, you deducted \$174.00 from my client's bank account. I demand that you return said funds to my client's account by April 1, 2016. The deduction of the funds that you took caused my client's account to receive an overdraft fee in the amount of \$37.00. I demand that you reimburse my client's account for the overdraft also.

Should you fail to honor the bankruptcy code and fail to return said funds to my client's account, I will conduct an appropriate investigation of your stay violations and submit a motion for sanctions for your contempt of the automatic stay of 11 U.S.C. § 362. Furthermore, any such motion will pray for compensatory damages as well as attorney fees. Please govern your actions accordingly. I remain,

Sincerely,



Rodney Lewis Caldwell

WE ARE A FEDERALLY DESIGNATED DEBT RELIEF AGENCY. WE HELP
PEOPLE FILE FOR BANKRUPTCY RELIEF UNDER THE BANKRUPTCY CODE.

BANKRUPTCY - PERSONAL INJURY - DIVORCE - SOCIAL SECURITY DISABILITY - CRIMINAL DEFENSE - GENERAL PRACTICE
A FULL SERVICE LAW FIRM

3:16-bk-01316 | JOHN LEWIS HENDERSON, JR.,